

Serial No. 10/660,547

REMARKS

In the Office Action, the Examiner noted that claims 1-27 are pending in the application, that claims 1-10 and 12-19 are allowed, and that claims 11 and 20-27 are rejected. By this Amendment, claim 11 has been amended with respect to the statutory subject matter rejection. Thus, claims 1-27 are pending in this application.

The Examiner's rejections are respectfully traversed below.

Request to Withdraw Finality

In the Office Action, the Examiner has indicated that the action is final. However, the amendments to claim 11 in response to the last Office Action are, at best, minor.

11. (Currently amended) In a method for authenticating at least one of data stored to be stored on ~~said at least one~~ media in order to prevent at least one of piracy, unauthorized access and unauthorized copying of the data ~~stored on said media~~, a data message comprising at least one predetermined error introduced in the data message comprising ~~a mixed~~ the data message, the at least one predetermined error comprising at least one authentication key or component thereof, used in authenticating whether the data message is authorized, and wherein the predetermined errors are sufficiently minimal such that the at least one predetermined error is capable of being removed therefrom without substantially altering an audible component of the data message, and wherein the data message is transmitted substantially free of the at least one predetermined error preventing a destination processor from the at least one predetermined error comprising the at least one authentication key or component thereof, used in the authenticating whether the data message is authorized.

None of these amendments could have caused the new rejection under 35 U.S.C. Section 101, described below in detail. Under these circumstances, the present Office Action should be non-final, and such action is respectfully requested.

Serial No. 10/660,547

However, to expedite prosecution, Applicant has nevertheless further amended claim 11 to emphasize the statutory subject matter recited therein. Accordingly, as discussed below, Applicant respectfully requests the statutory subject matter rejection be withdrawn, and this application passed to issue.

Rejection Under 35 USC § 101

Claims 11 and 20-27 are rejected are being directed to non-statutory subject matter. Applicant respectfully traverses this rejection.

The present invention is directed to a technique for authenticating data and/or a data medium in order to prevent unauthorized copying. More particularly, the invention makes use of one or more authentication keys which intentionally interferes with or alters normal output data to produced otherwise incorrect data (page 55-56). After being generated, these keys are embedded and hidden within data stored on the medium. In use, the authentication keys are identifiable by decoding the data (see, e.g., page 50). Subsequently, the keys may be used to remove the errors from the medium or, in other words, produce error-free or decoded data from the medium (page 61). As such, data and/or a medium may be verified as being a legitimate copy by locating and identifying an authentication key, which may then be used to produce audio, sensible and/or usable output. The claims recites an independent combination of elements including, for example, outputting said data as at least one of audio, video, audio data, video data and digital data substantially free of the predetermined error, modulation of the at least one modified modulation rule.

Applicant respectfully traverses the rejection. In particular, the **Manual of Patent**

Serial No. 10/660,547

Examining Procedure specifically approves of the claim format recited in claims 11 and 20-27. See e.g., MPEP Section 2106(c) ("A signal claim directed to a practical application of electromagnetic energy is statutory regardless of its transitory nature. See *O'Reilly v. Morse*, 56 U.S. at 114-19; *In re Breslow*, 616 F.2d 516, 519-21, 205 USPQ 221, 225-26 (CCPA 1980)").

However, to further clarify that the claimed invention is being used in combination with a computer readable medium which is clearly statutory subject matter, Applicant has further amended claim 11, even though the present Office Action is final. Specifically, Applicant respectfully requests entry of the present Amendment for the following reasons. First, the amendments to the claims are necessary to further clarify the claimed invention to the Examiner with respect to the rejection under 35 U.S.C. §101. These amendments were unable to be introduced earlier since additional new rejections were included in the Final Office Action. Second, the amendments to the claims do not raise new issues requiring further search since the amendments either adopt the Examiner's suggestions or involve incorporating features already existing in other pending claims. Third, Applicant respectfully submits that no new matter has been introduced. Specifically, the amendments to the specification merely include limitations that find support in the specification throughout. Fourth, the amendments to the claims place the application in better form for appeal by materially simplifying issues, i.e., correcting formality requirements and clarifying the asserted patentable distinctions over the prior art. Finally, no new claims have been submitted. Accordingly, Applicant respectfully requests entry of the present Amendment.

Accordingly, Applicant respectfully submits that Claims 1-11 satisfy the requirements under 35 USC § 101. Withdrawal of this rejection is respectfully requested.

Serial No. 10/660,547

CONCLUSION

Applicant respectfully submits that, as described above, the cited prior art does not show or suggest the combination of features recited in the claims. Applicant does not concede that the cited prior art shows any of the elements recited in the claims. However, Applicant has provided specific examples of elements in the claims that are clearly not present in the cited prior art.

Applicant strongly emphasizes that one reviewing the prosecution history should not interpret any of the examples Applicant has described herein in connection with distinguishing over the prior art as limiting to those specific features in isolation. Rather, Applicant asserts that it is the combination of elements recited in each of the claims, when each claim is interpreted as a whole, which is patentable. Applicant has emphasized certain features in the claims as clearly not present in the cited references, as discussed above. However, Applicant does not concede that other features in the claims are found in the prior art. Rather, for the sake of simplicity, Applicant is providing examples of why the claims described above are distinguishable over the cited prior art.

Applicant wishes to clarify for the record, if necessary, that the claims have been amended to expedite prosecution. Moreover, Applicant reserves the right to pursue the original subject matter recited in the present claims in a continuation application.

Any narrowing amendments made to the claims in the present Amendment are not to be construed as a surrender of any subject matter between the original claims and the present claims; rather merely Applicant's best attempt at providing one or more definitions of what the

Serial No. 10/660,547

Applicant believes to be suitable patent protection. In addition, the present claims provide the intended scope of protection that Applicant is seeking for this application. Therefore, no estoppel should be presumed, and Applicant's claims are intended to include a scope of protection under the Doctrine of Equivalents.

Further, Applicant hereby retracts any arguments and/or statements made during prosecution that were rejected by the Examiner during prosecution and/or that were unnecessary to obtain allowance, and only maintains the arguments that persuaded the Examiner with respect to the allowability of the patent claims, as one of ordinary skill would understand from a review of the prosecution history. That is, Applicant specifically retracts statements that one of ordinary skill would recognize from reading the file history were not necessary, not used and/or were rejected by the Examiner in allowing the patent application.

For all the reasons advanced above, Applicant respectfully submits that the rejections have been overcome and should be withdrawn.

For all the reasons advanced above, Applicant respectfully submits that the Application is in condition for allowance, and that such action is earnestly solicited.

Serial No. 10/660,547


AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees, which may be required for this Amendment, or credit any overpayment to Deposit Account No. 08-0219

In the event that an Extension of Time is required, or which may be required in addition to that requested in a petition for an Extension of Time, the Commissioner is requested to grant a petition for that Extension of Time which is required to make this response timely and is hereby authorized to charge any fee for such an Extension of Time or credit any overpayment for an Extension of Time to Deposit Account No. 08-0219.

Respectfully submitted,

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Date: 9/29/05

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